

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

PHILIP A. KENNER,
Also known as
"Philip A. Kenner," and
TOMMY C. CONSTANTINE,
Also known as
"Tommy C. Hormovitis,"

Defendants.

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EASTERN DISTRICT OF NEW YORK, SS:

MATTHEW GALIOTO, being duly sworn, deposes and states as follows:

1. I was a Special Agent with the Federal Bureau of Investigation ("FBI") from approximately November 1995 until September 28, 2020. From approximately October 1998 until July 2017, I was assigned to a white collar crime squad on Long Island, New York. As a special agent on a white collar crime squad, my duties and responsibilities included conducting investigations of individuals and business entities that have allegedly violated federal criminal laws, including Title 18, United States Code, Sections 1343 (wire fraud), 1349 (wire fraud conspiracy) and 1956 (money laundering).

2. I am a Certified Public Accountant and, prior to my employment with the FBI, one of my previous jobs was as an auditor. In my capacity as a special agent, I conducted numerous financial investigations including the tracing of proceeds of crimes, such as wire fraud and money laundering.

AFFIDAVIT OF MATTHEW GALIOTO
IN SUPPORT OF UNITED STATES'
MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO DANSKE
BANK'S CROSS-MOTION FOR
SUMMARY JUDGMENT

Criminal Docket No. 13-0607 (S-2)(JFB)

3. This affidavit is made in support of the government's motion for summary judgment seeking dismissal of the Verified Petition of Danske Bank A/S London Branch to Adjudicate Interest in Property Pursuant to 21 U.S.C. § 853(n) (the "Petition") filed by third-party petitioner Danske Bank A/S London Branch ("Danske") on May 6, 2020, and to respond to certain allegations contained in the Supplemental Declaration of David Daniel in Further Support of Danske Bank A/S London Branch's Motion for Summary Judgment ("Daniel Decl.") dated October 9, 2020. The facts and information in this affidavit are based upon my personal knowledge, recollection and observations.

4. In his declaration, David Daniel ("Daniel") purports to describe statements made by the government to him and Danske's counsel at several meetings beginning in 2015. *See* Daniel Decl. at ¶¶ 26-28. However, the only meeting that Daniel personally attended was a meeting held on November 18, 2015. I also attended that meeting.

5. In paragraph 26 of the Daniel Decl., he states, "In fact, during a meeting on November 18, 2015, the government commented that Danske would of course keep lending in order to protect its interest and never informed Danske that it intended to challenge Danske's interest in forfeiture proceedings." This statement is false. At no point in time in the November 18, 2015 meeting or the many other meetings I attended with other representatives of Danske did the government instruct Danske to, or comment as to whether Danske should, continue to lend money to the forfeitable resort known as Diamante Cabo San Lucas (the "DCSL Resort").

6. The government made it clear to Danske's counsel during the numerous meetings that I attended that it did not view Danske as a bona fide purchaser for value for the money it loaned after the bill of particulars was filed naming the DCSL Resort as forfeitable

property, and would not indicate whether in an ancillary proceeding it would consider Danske a bona fide purchaser for value as to the rest of its claim. Contrary to Daniel's allegations, the government has never given Danske reason to believe that its claim would go unchallenged.

7. Since the time of the government's meeting with Daniel on November 18, 2015, and at the numerous meetings with Danske that I attended thereafter, the government has expressed its concern with Danske's insistence that Kenneth Jowdy ("Jowdy") remain as the manager of the DCSL Resort, and has repeatedly questioned Danske about its staunch support for Jowdy despite Jowdy's relationship with defendant Philip Kenner and involvement in the conduct that gave rise to the forfeiture of the DCSL Resort.

Central Islip, New York
October 21, 2020

A handwritten signature in black ink, appearing to read "Matthew Galioto", written over a horizontal line.

MATTHEW GALIOTO
Retired Special Agent
Federal Bureau of Investigation